

1 HOWARD MOORE, JR., SBN 55228
2 MOORE & MOORE
3 1563 Solano Avenue, No. 204
4 Berkeley, California 94707-2116
Telephone: (510) 452-7172 or (510) 868-8834
Facsimile: (510) 528-3024
Email: moorlaw@aol.com

5 | Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

10 WILLIE BENTON,) Case No. CV08-1073 SBA
11 Plaintiffs,)
12 vs.) CERTIFICATE OF COUNSEL WHY
13 ALAMEDA-CONTRA COSTA) THIS CIVIL ACTION SHOULD NOT
TRANSIT DISTRICT, et al,) BE DISMISSED FOR FAILURE TO
14 Defendants.) PROSECUTE
15) Date: July 9, 2008
) Time: 4:00 p.m.
) Ctrm: 3 Oakland

17 Plaintiff WILLIE BENTON submits the following Certificate of Counsel in response to
18 the Order to Show Cause (Docket #18) why this case should not be dismissed for failure to
19 prosecute.

CERTIFICATE OF COUNSEL

21 I, Howard Moore, Jr., hereby certify that:

22 1. I am counsel of record for Plaintiff Willie Benton and an active member of the Bar
23 of this Court. I make this Certificate to offer in response to the Order to Show Cause why this
24 civil action should not be dismissed for failure to prosecute.

25 2. The instant Order to Show Cause arises from my failure on June 11, 2008, to
26 initiate the call for the Case Management Conference scheduled at 2:45 p.m., between the Court

28 CERTIFICATE OF COUNSEL IN RESPONSE TO ORDER TO SHOW CAUSE
Benton v. Alameda-Contra Costa Transit District, et al. Case No. CV-08-1073-SBA

and counsel of record for the parties. My failure to initiate the call is due entirely to my inadvertence and inattention.

A. Reason Why the Case Management Conference Did Not Go Forward on June 11, 2008.

3. On June 11, I planned to place the call to initiate the Case Management Conference from my office in Berkeley, using my Internet phone (510.868.8834), which has the capability for conference calls. However, I had not used it before for that purpose. When I attempted to initiate the call, I could not do so. As a result, I decided to call my office in Oakland and arrange to have Ms. Fania E. Davis initiate the call between myself, the Court, and counsel for Defendant over a land lined telephone. To make sure I had the correct telephone number for the Court, I mistakenly pulled up the Court's May 22, 2008 Clerk's Notice (Docket #15), which set the Case Management Conference for June 12, at 3:00 p.m., instead of the June 5 Clerk's Notice which set the Case Management Conference for June 11, at 2:45 p. m. Because I was not paying close attention to what I was doing, I thought I was a day early and told Ms. Davis to forget about it that the Case Management Conference was the next day, June 12. I was distracted or the victim of wishful thinking because I was also scheduled to appear at 3:00 p.m. on June 11, at a Case Management Conference in Department 17 of the Alameda County Superior Court, in the case of *Moore, et al v. Brown, et al*, No. RG07320886, a civil action in which my daughters are suing a home re-modeler for fraud, among other things.

4. When I returned to my office from the Alameda County Superior Court late in the afternoon on June 11 and heard a message Ms. Cathleen Wadhams, counsel for Defendant, left for me, I realized my mistake and felt like a fool.

5. I apologize to the Court and opposing counsel for the inconvenience my inadvertence caused. I commit myself to be more attentive in the future to avoid such mistakes.

B. Nature and Status of the Action and Its Expected Course

6. This is a civil action to redress age, retaliation, and racial discrimination in

1 employment. Since May of 1979, Plaintiff has been employed by Defendant as a mechanic in the
2 maintenance department. In the fall of 2006, Plaintiff objected to management blaming the
3 mostly African American mechanics for problems AC Transit was experiencing with buses it
4 recently acquired from a European manufacturer. Maintenance supervisors, Steve Tracey and
5 Mike Cordero, retaliated against Plaintiff by assigning him the most difficult and undesirable
6 jobs; over loading him with assignments; falsely accusing Plaintiff of improperly repairing a bus
7 which was taken out of service; attempting to fire Plaintiff; and threatening Plaintiff with bodily
8 harm.

9 7. On February 22, 2008, Plaintiff filed this civil action pro se. On April 22, 2008,
10 Plaintiff substituted me into the case as his counsel of record (Docket #8).

11 8. On April 28, 2008, this action was reassigned to this Court (Docket #11), after a
12 declination was filed concerning the magistrate judge to whom the action was originally
13 assigned.

14 9. On May 19, 2008, the parties filed their Joint Case Management Statement and
15 (Proposed) Order to set the commencement of trial in this action on May 18, 2009 (Docket #14,
16 page 4). In their Joint Case Management Statement, the parties agreed to exchange Initial
17 Disclosures by June 30, and they agreed to conduct written fact discovery and limited deposition
18 discovery before engaging in an agreed-upon form of ADR before completing any discovery
19 which remained to be done.

20 10. This action has not been brought to trial solely because the parties have not had
21 sufficient time in which to prepare it for trial since it was commenced on February 22, 2008, and
22 reassigned to this Court on April 28, 2008 (Docket #11).

23 11. The initial Case Management Conference has not been conducted due first to the
24 unavailability of the Court on May 29, 2008, and second my inadvertence and mistake as
25 described herein on June 11, 2008.

26 ---
27
28

1 I have personal knowledge of the matters stated herein, and, if I were called as a witness, I
2 could and would be able to testify competently thereto. The foregoing statement of facts is true
3 and correct. Executed under penalty of perjury of the laws of the United States, at Berkeley,
4 California, on June 26, 2008.

5 *s/Howard Moore, Jr.*
6 **HOWARD MOORE, JR.**
7
8
9

CERTIFICATE OF SERVICE

10
11 I hereby certify that the foregoing document was served on June 26, 2008, on counsel of
12 record for Defendant by electronic means through this Court's website pursuant to Rule 5(D),
13 Fed. R. Civ. P.
14

15 *s/Howard Moore, Jr.*
16 **HOWARD MOORE, JR.**
17
18
19
20
21
22
23
24
25
26
27
28